

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

BARON N. HAGHIGHI,)	CASE NO. C07-0679-MJP-MAT
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
LOUIS FRANTZ, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff is currently confined in the King County Correctional Facility in Kent, Washington. On May 3, 2007, plaintiff presented to this Court for filing a civil rights complaint under 42 U.S.C. § 1983. (Dkt. #1). The complaint listed seven defendants, but the allegations concerned only the conduct of one defendant, a private attorney named Louis Frantz, who had been representing plaintiff recently in criminal proceedings in state court. Plaintiff contended that his attorney had failed to investigate the charges against him and that his attorney had, in essence, provided ineffective assistance of counsel.

On June 9, 2007, the Court issued an Order to Show Cause to plaintiff directing him to

01 file an amended complaint that cured the deficiencies of the original complaint.¹ (Dkt. #9). The
02 Court advised plaintiff that his allegations against his former counsel could not form the basis of
03 a § 1983 action, because a private attorney does not act under color of state law unless the
04 attorney conspires with state officials, and plaintiff had made no such allegations. *See Tower v.*
05 *Glover*, 467 U.S. 914, 920 (1984). The Court also advised plaintiff that a claim that his former
06 counsel was ineffective would call into question the lawfulness of plaintiff's conviction or
07 confinement and therefore the claim would not accrue unless and until the conviction or sentence
08 is invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 489 (1994).

09 On June 29, 2007, plaintiff filed an amended complaint. (Dkt. #17). The amended
10 complaint still suffers from the same deficiencies as the original. Plaintiff's claims focus solely on
11 his former counsel's conduct and, as mentioned, those claims cannot form the basis of a
12 § 1983 action. As plaintiff has not stated a cognizable claim for relief in these proceedings, the
13 Court recommends that plaintiff's amended complaint and this action be dismissed, without
14 prejudice, prior to service, for failure to state a claim upon which relief may be granted under
15 § 1915(e)(2)(B)(ii). The Court further recommends that this dismissal count as a "strike" under
16 28 U.S.C. § 1915(g). A proposed order accompanies this Report and Recommendation.

17 DATED this 10th day of July, 2007.

18 
19 Mary Alice Theiler
20 United States Magistrate Judge

21 ¹ The Court also directed plaintiff to explain why the original complaint had not listed all of the
22 other lawsuits he had filed in federal court. The Court finds that his response (Dkt. #10) to the
Order to Show Cause adequately explains this discrepancy.